

# PERSONAL PROPERTY & SECURITY ACT-

Enactment of PPSA 2009- came into effect in 2012.

- Credit providers often require security to be given for loans.
- If this security is over land or real property then it is governed by the Torrens title System.
- If Security is over personal property it falls within the ambit of the PPSA.
- The PPSA applies whenever the substance of a transaction involves security over goods
- Security interests in personal property

## **Q1) Rule: Only Personal Property falls within the ambit of the Act.**

**Question: Is it real property or personal property? (Must be able to distinguish between the two)**

- Real property is governed under the Torrens title not under the PPSA
- Personal property defined in **s 10**
- **S10** - Personal property defined as includes tangible property such as motor vehicles, machinery, office furniture, currency, artworks and stock-in-trade. It covers crops and livestock, and extends to fixtures (such as an indoor fire sprinkler or PABX telephone system), accessions (like an engine that is affixed to a boat) and commingled goods (such as steel rods transformed into machinery). It also includes intangible property such as contract rights, uncertificated shares and intellectual property rights (for example, trademarks and patents).
- Does not include fixtures which have become part of the land.
- ***Re Cancer Care Institute of Australia [2013] NSWSC 37***: Court looked to see if a radiation machine was affixed to the land. Look to purpose of the object, if it can be served or if it is so affixed to the land it becomes apart of it. The court ruled for this case that the radiation machine Retained status of chattel- because it was only affixed to the land so firmly to be able to properly operate the machine. Not real property- personal property.

## **Q2) Rule: If the substance of the agreement secures the payment or performance of an obligation, then it is a security interest” and is captured within the ambit of the PPSA**

**Question 2)** Is transaction one that in substance secures payment or performance of obligation?

**Approach is now largely substance over form! NO longer necessary to have transfer of legal or equitable title.**

- **s 12(1) Defines security interest** -  
‘An interest in relation to personal property that in substance secures payment or performance of an obligation’
- Examples in s 12(2) **Non-exhaustive list**- (Non exhaustive list of traditional forms of security interests)
  - Fixed and floating charges
  - Chattel mortgages and leases
  - Condition and hire-purchase sale agreements